

NO. 25166

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

MARK ALAN MARTINS, Defendant-Appellee

APPEAL FROM THE SECOND CIRCUIT COURT
(CR. NO. 00-1-0234)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over the appeal by Plaintiff-Appellant State of Hawai'i (Appellant State) from the June 3, 2002 order denying Appellant State's motion to correct the sentence pursuant to Rule 35 of the Hawai'i Rules of Penal Procedure (HRPP). "The Prosecution's right of appeal in criminal cases is limited to those instances set forth in HRS § 641-13." State v. Fukusaku, 85 Hawai'i 462, 490, 946 P.2d 32, 60 (1997) (citations, internal quotation marks, and brackets omitted). We have acknowledged "that the plain language of [HRS] § 641-13(6) allows an appeal from an illegal sentence -- a sentence which the court is not authorized to impose[.]" State v. Kahalewai, 71 Haw. 624, 626, 801 P.2d 558, 560 (1990). Nevertheless, the language of HRS § 641-13(6) (1993) "must be strictly construed and . . . cannot be extended beyond the plain meaning of the terms found therein." State v. Kahalewai, 71 Haw. at 626, 801 P.2d at 560 (citations and internal quotation marks omitted). Thus, HRS § 641-13(6) (1993) would authorize Appellant State to appeal from an order granting a motion to correct a sentence pursuant to HRPP Rule 35,

because such an order constitutes a new "sentence" that is appealable as an allegedly illegal sentence pursuant to HRS § 641-13(6) (1993). See, e.g., State v. Williams, 70 Haw. 566, 777 P.2d 1192 (1989). However, Appellant State appealed from the June 3, 2002 order that denied Appellant State's motion to correct sentence pursuant to HRPP Rule 35. No new sentence resulted from the June 3, 2002 order. Under these circumstances, the June 3, 2002 order is not an appealable order pursuant to HRS § 641-13(6) (1993).

Appellant State's June 14, 2002 notice of appeal fails as an appeal from the March 1, 2002 judgment of conviction because Appellant State did not file it within thirty days after entry of the March 1, 2002 judgment of conviction, as Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required. Appellant State's June 14, 2002 notice of appeal also fails as a cross-appeal because Appellant State failed to file it within fourteen days after service of Defendant-Appellee Mark Alan Martins' March 28, 2002 notice of appeal, as HRAP Rule 4.1(b)(1) required. Therefore, we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that Appellant State's appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, September 24, 2002.